CURRENT DECISIONS

ARBITRATION AND AWARD—INSURANCE POLICY—AGREEMENT FOR DETERMINATION OF DAMAGE NOT AGREEMENT TO ARBITRATE.—It was provided in a standard fire insurance policy that if any disagreement should arise over the amount of loss it should be determined by appraisers. Loss occurred, and the plaintiff sought to force compliance with the provision under the N. Y. Arbitration Law (Laws of 1920, ch. 275, sec. 4). The defendant appealed from an order to so arbitrate. *Held,* that the clause which does not authorize the appraisers to pass upon the question of the whole liability, but restricts them to the amount of loss, does not constitute an agreement to arbitrate. *American Ins. Co. v. Wasserman* (1924, App. Div. 1st Dept.) 71 N. Y. L. JOUR. 1049.

The weight of authority agrees that such a clause calls merely for an appraisal and not an arbitration. *Townsend v. Greenwich Ins. Co.* (1903, 2d Dept.) 86 App. Div. 323, 83 N. Y. Supp. 909; NOTES (1922) 8 CORN. L. QUART. 53; *contra: Western Assurance Co. v. Hall & Bro.* (1895) 112 Ala. 318, 20 So. 447. However, the test for an arbitration which this court reiterates, and which is first to be found in the reporter's note to *Elmendorf v. Harris* (1830, N. Y. Senate) 5 Wend. 522, materially destroys the value of the Arbitration Law. There seems to be no reason why a controversy should not be settled by arbitration under the statute whether it leaves open the question of ultimate liability or not. *Hamilton v. Home Ins. Co.* (1890) 137 U. S. 370, 11 Sup. Ct. 133; *cf. Western Assurance Co. v. Hall & Bro., supra;* Morse, *Arbitration and Award* (1872) 40.

CONSTITUTIONAL LAW—DECLARATORY JUDGMENT—UNIFORM ACT.—A will devised real estate to the executrix to be managed and used by her for herself and her children with power to sell if in her judgment necessary. Her absolute discretion in the premises free from control by the courts was contested by her son. She filed a bill praying a declaratory judgment construing the will. The defendant denied the constitutionality of the Uniform Declaratory Judgment Act. The lower court dismissed the bill. *Held,* that the declaration be made. *Miller v. Miller* (1924, Tenn.) 261 S. W. 965.

This is the first construction of the constitutionality of the Uniform Declaratory Judgment Act. The constitutionality of the declaratory judgment has been previously established. *State, ex rel. Hopkins, Attorney-General, v. Grove* (1921) 109 Kan. 619, 201 Pac. 82; *Blakeslee v. Wilson* (1923) 190 Calif. 479, 213 Pac. 495; NOTE AND COMMENT (1922) 20 MICH. L. REV. 436; COMMENTS (1922) 31 YALE LAW JOURNAL, 419; (1923) 33 *ibid.* 105. See generally, Borchard, *The Declaratory Judgment—A Needed Procedural Reform* (1918) 28 YALE LAW JOURNAL, 1, 105.

COPYRIGHTS—RADIO BROADCASTING NOT INFRINGEMENT OF COPYRIGHT.—The Copyright Act of March 4, 1909 (35 Stat. at L. 1075) as amended Aug. 24, 1912 (37 Stat. at L. 489) provides that any person entitled thereto, upon compliance with the provisions of the act, be given the exclusive right to perform the copyrighted work publicly for profit if it be a musical composition for that purpose. The plaintiff owners of a copyrighted song sought to enjoin the defendant, a manufacturer of radio receiving sets and parts, from broadcasting the song from a station maintained and operated by the defendant as a part of its business. The defendant moved to dismiss the complaint. *Held,* that the complaint be dismissed, as such broadcasting did not constitute a "public performance for profit" within the meaning of the act. *Remick & Co. v. American Automobile Accessories Co.* (1924, S. D. Ohio) 298 Fed. 628.

The purpose of copyright acts, as shown by their historical development, makes them essentially a monopolistic influence. Holdsworth, *Press Control and Copyright in the 16th and 17th Centuries* (1920) 29 YALE LAW JOURNAL, 841; *Herbert v. Shanley Co.* (1917) 242 U. S. 591, 37 Sup. Ct. 232. The act, therefore, must be given a liberal construction if its purpose is to be accomplished. *M. Whitmark & Sons v. L. Bamberger & Co.* (1923, D. N. J.) 291 Fed. 776; *Harms v. Cohen* (1922, E. D. Pa.) 279 Fed. 276; (1924) 24 COL. L. REV. 90; (1924) 72 U. PA. L. REV. 190. The court in the instant case seems unfortunately to have been led into an over strict construction of the act due to the dictionary definition method of construing the words used.

MUNICIPAL CORPORATIONS—POWER TO BORROW MONEY INCLUDES POWER TO ISSUE NEGOTIABLE BONDS.—The plaintiff, a taxpayer, sought a declaratory judgment on the power of the defendant school district to issue negotiable bonds and for an injunction restraining such issue. The school district had power to tax and to borrow money under the act of incorporation. The lower court advised for the power to issue the bonds, but reserved opinion. *Held*, that a declaratory judgment be given in favor of such power. *Russell v. Middletown City School District* (1924, Conn.) 125 Atl. 641.

The majority of courts refuse to imply a power to issue negotiable bonds, which are not subject to "equitable defenses," and thus leave the municipal corporation to a less readily marketable acknowledgment of indebtedness. *Brenham v. German-American Bank* (1892) 144 U. S. 173, 12 Sup. Ct. 559; *First National Bank v. Nye County* (1914) 38 Nev. 123, 145 Pac. 932; 5 McQuillan, *Municipal Corporations* (1913) 4815; 2 Dillon, *Municipal Corporations* (5th ed. 1911) 1325. The instant case is one of first impression in Connecticut and accords with the rule implying from the power to borrow money, the power to use the most effective and practical means therefor. *Jones v. Guilford County* (1923) 185 N. C. 303, 117 S. E. 37; *cf.* Hackett, *The Supreme Court and Municipal Bonds* (1892) 6 HARV. L. REV. 73.

SURETYSHIP—GUARANTY OF PAST INDEBTEDNESS BY PRINCIPAL DEBTOR.—One Parker, a retail merchant, induced the defendants to become sureties for his past and future indebtedness to the plaintiff by falsely representing that, at the time they signed the guaranty in his renewal contract, he was not indebted to the plaintiff. The plaintiff sued the defendants for the amount due both before and after the signing. From a judgment dismissing the action, the plaintiff appealed. *Held*, that since Parker was the agent of the plaintiff as to the misrepresentation, the defendants need pay only the debt incurred by Parker after the signing. *W. T. Rawleigh Co. v. Warren et al.* (1924, S. D.) 198 N. W. 555.

Fraudulent misrepresentations of material facts made by a principal debtor to a surety do not affect the surety's liability to the creditor. *Knapp & Co. v. Wilks* (1912) 105 Ark. 243, 151 S. W. 280; *Watkins Medicine Co. v. Hargett* (1923, Ala.) 95 So. 811; Ann. Cas. 1916 A, 501, note; Spencer, *Suretyship* (1913) 75. But misrepresentation of a material fact by a creditor or his agent is a good defense to a surety. *Milan Bank v. Richmond* (1911) 235 Mo. 532, 139 S. W. 352; *Johnson Farm Loan Co. v. McManigal* (1923, C. C. A. 8th) 288 Fed. 185; (1919) 28 YALE LAW JOURNAL, 410. On the facts of the instant case it is difficult to justify the court's assumption that Parker was acting as the agent of the plaintiff in securing the guaranty. *Saginaw Medicine Co. v. Batey* (1914) 179 Mich. 651, 146 N. W. 329.